MITCH PRICE

TEACHER UNION CONTRACTS AND HIGH SCHOOL REFORM

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INTRODUCTION

Are teachers unions and collective bargaining agreements barriers to high school reform and redesign efforts in Washington, California, and Ohio? The short answer: sometimes, but not as often as many educators seem to think.

On one hand, collective bargaining agreements (CBAs)—long, complex, and unwieldy documents which can be difficult for an overworked principal to navigate—are often perceived as obstacles by many principals and other educators, and to a certain extent this perception becomes reality. And, while these perceptions can limit school-level flexibility and autonomy, there are also restrictive provisions within CBAs that do so as well.

On the other hand, CBAs tend to have waiver provisions. In many cases, districts and teachers unions can also negotiate side agreements on individual issues (e.g., memoranda of understanding, or MOUs) to provide desired flexibility. And, in perhaps our most significant finding, many of the CBA provisions that we analyzed were more flexible than educators and reform advocates often suggest.

Finally, many CBA provisions that we studied were simply ambiguous. This ambiguity could potentially allow for greater latitude for an aggressive principal who is looking for more flexibility and willing to push the envelope, while serving to limit a more cautious or timid principal who looks to the CBA for explicit authority or permission first before acting.

Rather than wade into the pro- versus anti-union debate, this report instead aims to offer guidance for educators, unions, and districts that are interested or engaged in high school reform work. The report offers suggestions and recommendations regarding specific issues raised by interviewees in our previous studies of legal barriers to high school reform and redesign, as well as case studies conducted as part of the School Finance Redesign Project (SFRP). By highlighting examples of flexible provisions in existing CBAs, the report is designed to be a roadmap for educators and reform advocates looking for more flexibility to implement reform efforts.

The report offers an overview of real and perceived barriers to reform, along with an overview of flexible provisions culled from the various CBAs that we examined. The report also includes broader recommendations and suggestions regarding potential changes to local CBAs and related policies, and the behavior of district and union officials.

BACKGROUND

The impact of teachers unions and collective bargaining agreements on high school reform efforts is an issue that came up repeatedly in interviews with educators in our Washington, California, and Ohio legal barriers studies, which looked at obstacles to creating redesigned high schools.[1] We interviewed teachers, principals, union officials, and state and local policymakers, asking them what barriers stood in the way of reform; many cited unions and collective bargaining agreements (CBAs).

Similarly, in case studies of Washington and Ohio conducted as part of the School Finance Redesign Project,[2] many interviewees cited unions and CBAs as impediments to creating a more effective and efficient school finance system, and to improving instruction and educational outcomes more generally.[3]

We did not fully explore this issue in those previous studies. However, we subsequently undertook a more comprehensive exploration of the subject, the results of which are reported here.

In attempting to assess the impact of unions and collective bargaining agreements on high school reform and redesign work, we focused on the three states that were the subject of our previous legal barriers studies. We reviewed our interviews with educators from these studies, as well as from the SFRP case studies, to identify relevant CBA-related issues raised by interviewees. We then examined a total of eight CBAs from districts in the three states: Seattle, Tacoma, Los Angeles, San Francisco, Oakland, Cleveland, Cincinnati, and Columbus.

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1. For more information on CRPE's legal barriers studies, see:
Ohio: http://www.crpe.org/cs/crpe/view/csr_pubs/29
California: http://www.crpe.org/cs/crpe/view/csr_pubs/30
Washington: http://www.crpe.org/cs/crpe/view/csr_pubs/34

2. For more information on the School Finance Redesign Project, see http://www.crpe.org/cs/crpe/view/projects/3.

3. See Shelley De Wys et al., *Performance Pressure and Resource Allocation in Washington,* SFRP Working Paper 26 (Seattle, WA: Center on Reinventing Public Education, January 2008), and see De Wys et al., *Performance Pressure and Resource Allocation in Ohio,* SFRP Working Paper 27 (Seattle, WA: Center on Reinventing Public Education, February 2008).

In reviewing the documents, we concentrated on CBA provisions that address the two issues raised most frequently by interviewees—namely, principals' desire for school-level *personnel autonomy* and *scheduling flexibility*.

Personnel autonomy. Given the collaborative nature of teaching at many redesigned high schools (e.g., team teaching, common planning), principals we spoke with emphasized the importance of being able to hire like-minded people to join together and work as a team.[4] If principals were going to be held to higher standards of accountability, and if they were going to implement new and innovative models of schooling, then they wanted greater control over who would be working in their school. But instead of being able to hire staff sympathetic to the school's goals, principals often report finding themselves constrained by seniority-based hiring provisions of the CBA.

Scheduling flexibility. Many redesigned high schools also seek scheduling flexibility—to provide teachers with time to plan, consult, and collaborate with each other; to find time to offer ongoing and embedded professional development for staff; and to organize the school day to best suit their particular educational model.[5] Principals told us that creating flexible and innovative daily schedules can be difficult, however, in part due to provisions in the CBA that regulate teachers' time.

In analyzing the CBAs, we also looked at specific contract mechanisms designed to provide school-level autonomy and flexibility—from waivers and memoranda of understanding, to special sections or provisions that address reform-related issues more directly (such as sections on site-based decisionmaking or small learning communities).

In this study, we have attempted to limit our focus to the "four corners of the documents"—i.e., to analyze the CBA provisions themselves, focusing on those that most directly impact reform issues raised by stakeholders in interviews. We wanted to focus squarely on the contract itself in an attempt to assess whether the complaints from interviewees in previous studies that union contracts are barriers to reform were valid.

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4. Mitch Price, *Legal and Policy Barriers to Redesigning California High Schools* (Seattle, WA: Center on Reinventing Public Education, April 2006), p. 18.

5. Ibid., p. 20.

CAVEATS

We should point out that collective bargaining agreements exist within an interconnected web of laws, regulations, and school board policies, all of which potentially impact high school reform efforts at the school level, but which are beyond the scope of this relatively limited analysis of the contracts themselves.

Also, we should note that there is a general distinction between the contract as a document available for detached analysis, and the contract as practiced. While our analysis will point to a number of CBA provisions that provide potential flexibility, any contract can be used flexibly or inflexibly, depending on the inclinations of both parties. If the teachers union is inclined to grant contract waivers or enter into side agreements, then this can result in a good deal more flexibility than the contract language might suggest. However, if a union refuses consent, or agrees to experiments but then constantly threatens to scuttle them, then there is actually little flexibility in practice. The same can be said of the management side: much depends on whether management makes a liberal interpretation of the contract and takes action until stopped, or instead lives by the most restrictive interpretation of the contracts, or imposes even greater limitations on itself to avoid friction with the union.

In addition, we do not mean to suggest that if a CBA provision is considered not flexible enough to suit the administration, then it must be the union's fault, while on the other hand implying that whatever principals or administrators want to do is fine because they are always competent and fair-minded (this overstates the case to make the point clear). Not all CBAs stand in the way of reform or, at least, not all reform. Rather, as this paper will detail, one of our findings is that CBAs can sometimes stand in the way of actions—such as increased school-level hiring autonomy or scheduling flexibility—that might in at least some circumstances be reasonable approaches to school improvement. This is not the same thing as saying that those actions would always be desirable or effective. Judging whether a particular action is desirable requires detailed knowledge of a particular situation, which we do not pretend to have. However, it seems from our analysis that the CBAs that we studied can sometimes make it difficult to take those actions; in effect, prejudging those actions as bad.

In this context, it is also useful to keep in mind two things about collective bargaining agreements. First, they are signed by two parties—both the teachers union and the school district negotiated and ultimately agreed on the provisions in the contract, which involved conscious tradeoffs by both parties. So, for example, one cannot blame just the union for an allegedly restrictive provision, because ultimately the district agreed to this provision as well. Second, it is important to remember why CBAs came to be in the first place—to prevent arbitrary and often discriminatory actions. Similarly, keep in mind how certain contract provisions "grew up"—as one labor relations analyst put it, you could probably trace most contract provisions back to a specific situation that caused the union to negotiate it in the first place.

However, while each individual CBA provision may have been agreed to by both sides and adopted for a good reason, in combination these provisions can sometimes inhibit reform and innovation, as addressed below. And, since subsequent contract negotiations typically begin with the current CBA as a starting point, once a provision is in the contract, it is often hard to remove it.

A final caveat has to do with the scope of this study. We analyzed collective bargaining agreements in eight districts in three states. While we believe that many of the lessons we have learned apply more broadly (at least in part because the general structure and specific provisions of many CBAs are quite similar), we also want to be clear that our findings and conclusions should be considered within the context of the relatively limited scope of our particular study. For instance, as touched on below, the ultimate success or failure of particular reform efforts in a given locale often depends as much on local politics and relationships among stakeholders as it does on the broader policies and provisions detailed in this report.

ARE UNIONS AND COLLECTIVE BARGAINING AGREEMENTS BARRIERS TO HIGH SCHOOL REFORM EFFORTS?

Are teachers unions and collective bargaining agreements barriers to high school reform and redesign efforts in Washington, California, and Ohio? The short answer: sometimes, but not as often as many educators seem to think. The following subsections address this basic question in greater detail.

YES, BECAUSE MANY EDUCATORS PERCEIVE COMPLEX AND UNWIELDY COLLECTIVE BARGAINING AGREEMENTS AS BARRIERS TO REFORM

In our previous studies of legal barriers to high school reform in Washington, California, and Ohio, as well as in the SFRP case studies, many educators, policymakers, and reform advocates we talked with cited unions and collective bargaining agreements as barriers to reform. Interviewees told us that "CBAs constrain efforts to improve educational outcomes … prevent the district from doing what is best for kids … constrain resource use … [and are] one of the largest impediments to effective resource use." They also contended that "reform activities are significantly impacted by union contract terms … certain reforms fall victim to the opposition of powerful teachers unions …" and called CBAs "one of the largest impediments to effective resource use." [6]

We noted that in many cases, like those examples provided here, the interviewees did not cite specific provisions of the CBA as a barrier. This suggests that, at least sometimes, "the contract" may serve as a convenient scapegoat rather than an actual impediment. Other studies have reached similar conclusions. In a study that included analysis of collective bargaining agreements in a random sample of 20 districts, Frederick M. Hess and Andrew P. Kelly note that "the findings here question whether some administrators and board mem-

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6. See De Wys et al., *Performance Pressure and Resource Allocation in Washington,* and see De Wys et al., *Performance Pressure and Resource Allocation in Ohio.*

bers may be using the local CBA as an excuse for inaction."[7] And, in another analysis of contracts in the nation's 50 largest school districts, Hess and Coby Loup conclude that "the depiction of The Contract as an all-powerful, insurmountable barrier to reform may be overstated."[8]

To a certain extent, this perception of "the contract" as a barrier—whether true or not—becomes reality. If a principal hesitates to implement a specific reform because he or she *thinks* the CBA prohibits it, then it does not really matter whether in fact the CBA *actually* contains such a prohibition—either way, the principal's autonomy to act is circumscribed, and his or her options become more limited.

In addition, CBAs tend to be long, detailed, unwieldy, complicated documents that regulate and dictate countless aspects of schools, including areas cited by educators as especially important to high school reform efforts—specifically, personnel autonomy and scheduling flexibility. Such complexity can discourage innovation by those for whom "playing by the rules" is important, while at the same time giving those reluctant to make changes a ready excuse to say "No."[9]

The average length of the CBAs that we studied was 206 pages. The shortest contract was 88 pages (Cincinnati), while the longest was 348 pages (Los Angeles).[10] Imagine the view from the reform-minded principal's desk, as he or she wades through literally hundreds of pages of complex, intricate legal language in an effort to find authority to implement school-level reforms. As another analysis of contracts concluded, "Language may flatly prohibit school leaders from making sensible decisions, but more often it may be an agreement's complex

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7. Frederick M. Hess and Andrew P. Kelly, "Scapegoat, Albatross, or What? The Status Quo in Teacher Collective Bargaining," in *Collective Bargaining in Education: Negotiating Change in Today's Schools*, eds. Jane Hannaway and Andrew J. Rotherham (Cambridge, MA: Harvard Education Press, 2006), p. 79.

8. Frederick M. Hess and Coby Loup, *The Leadership Limbo: Teacher Labor Agreements in America's Fifty Largest School Districts* (Washington, DC: Thomas B. Fordham Institute, February 2008), p. 6 and p. 29.

9. Price, *Legal and Policy Barriers*, p. 46.

10. Length of CBAs that we analyzed for this study: Cincinnati 88 pages; Cleveland 276 pages; Columbus 248 pages; Los Angeles 348 pages; Oakland 277 pages; San Francisco 168 pages; Seattle 145 pages; and Tacoma 116 pages.

provisions, the time required to comply with its elaborate procedures, and extensive grievance processes deter forceful leadership and add up to management by paralysis."[11]

YES, BECAUSE SENIORITY-BASED PREFERENCES AND TIME-USE RULES CONSTRAIN SCHOOL-LEVEL STAFFING AND SCHEDULING AUTONOMY

While perceptions may limit a principal's school-level autonomy, CBAs contain actual provisions that do so as well.

By their very nature, district-wide collective bargaining agreements are going to constrain school-level autonomy and flexibility to a certain extent; the contract is designed to apply to all schools throughout the district and thus must include some limits on site-level decisionmaking authority. Our analysis of the eight contracts that we studied revealed a number of provisions that constrain a principal's school-level hiring autonomy and scheduling flexibility.

Specifically, according to school leaders, seniority-based personnel provisions and restrictive time-use rules can inhibit their ability to staff their schools and structure the school day as they see fit.

Seniority-based preferences. All of the contracts that we examined use seniority as a factor of some kind in determining transfers, assignments, layoffs, and recalls. Seniority is typically one factor in determining a teacher's school assignment or placement, and can be the deciding factor. Internal applicants are often given preference over new hires for vacant positions. If involuntary transfers are necessary, principals may have only limited discretion in determining who will be involuntarily transferred from their school, and certain contracts stipulate that the district must select the most junior teacher; seniority is often the

11. Hess and Loup, *The Leadership Limbo*, p. 15.

primary factor in determining whether or not a teacher will be involuntarily transferred. And some contracts allow a teacher identified for an involuntary transfer to "bump" a less senior teacher from his or her job.

Seniority-based transfer rules were one of the alleged barriers most commonly cited by principals we spoke with. However, as discussed more fully later in this report, upon closer inspection almost all of the transfer, assignment, and layoff provisions that we looked at turned out to contain at least some degree of flexibility or wiggle room—i.e., while seniority is almost always a criterion, it is not the only criterion, and it is not the controlling factor in most of the contracts we examined.

Time-use rules. While many time-use rules are dictated by state law (including the length of the school year and minimum instructional day minutes), the CBAs we studied still contain potentially restrictive time-use provisions. For example, the Oakland CBA states that the "workday shall not commence before 8 or conclude later than 3:45."[12] The Oakland contract also limits faculty meetings to ten per year, and each meeting is limited to an hour and 15 minutes in length.[13] The San Francisco contract requires teachers to be in their classroom at least 15 minutes but not more than 30 minutes before the opening of school. In Tacoma, staff meetings are limited to not more than eight per year, each of which can extend up to 40 minutes beyond the normal workday.[14] The Cincinnati contract allows for no more than two building-wide staff meetings per month in non-team-based schools, while in Cleveland mandatory meetings are limited to one faculty meeting for one hour each month.[15]

As in the case with the seniority-based preferences highlighted above, most of the time-use rules that we examined contain at least some flexibility. For example, in Oakland, teachers can volunteer to work special periods scheduled before the start of the official school

12. Oakland CBA Sec. 10.2.1.
13. Ibid., Sec. 10.4.
14. Tacoma CBA Sec. 46.
15. Cleveland CBA Sec. 6(A)(1).

day. The San Francisco contract allows site-based committees to designate additional time before or after school within the defined district-wide teacher workweek.[16] In Tacoma, while district-wide schedule changes are subject to collective bargaining, there is individual school-level flexibility.[17] In Cincinnati, the limit on staff meetings applies in non-team-based schools, implying that team-based schools have more flexibility. And in Cleveland, while the contract limits mandatory staff meetings to one per month, it also contemplates other voluntary meetings developed with staff consensus.[18]

NO, BECAUSE COLLECTIVE BARGAINING AGREEMENTS CONTAIN WAIVER PROVISIONS

Each of the CBAs that we analyzed for this study contained some type of provision for waivers and/or memoranda of understanding (MOUs). The contract typically outlines the process by which a school, the district, or the union can request waivers from the contract. A waiver request usually requires the approval of a certain percentage of the school staff, as well as the building's union representative and school principal. The request is then submitted to the district and the union, and the waiver is granted only if both the district and the union agree. An MOU (sometimes called a memorandum of agreement) is a document that is negotiated separately from the CBA. It is essentially an interim agreement on a specific issue. It can take the form of a letter, signed by district and union officials, that describes what the parties have agreed to and why. An MOU could outline specific rules that will apply to a particular school, and/or outline ways in which a redesigned school will operate differently than it would under terms of the CBA.[19]

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16. San Francisco CBA Sec. 7.2.1.2.

17. Tacoma CBA Sec. 57(B).

18. Cleveland CBA Sec 6(A)(6).

19. Kelly Warner-King and Mitch Price, *Legal Barriers to Creating Effective High Schools in Washington State* (Seattle, WA: Center on Reinventing Public Education, July 2004), pp. 29-30.

The waiver approval process varies from contract to contract, with some provisions specifying requirements with a great degree of specificity (a two-thirds vote of staff in Seattle, plus the union and district must be in agreement[20]), while other contracts are more vague (in Oakland, the contract simply directs the district and union to come up with their own internal waiver processes: "The Employer shall develop its own internal process by which District policies and administrative procedures may be waived … The Association shall develop its own internal process by which provisions of this Agreement may be waived."[21]).

While it is good policy and good practice to ensure that teachers are on board and supportive of a particular waiver proposal via a staff vote, a potential problem with requiring the approval of the district CEO and union president personally is that a recalcitrant leader could essentially have veto power over waiver proposals (i.e., the ability to "drop anchor" and slow or halt the reform process, as one interviewee put it).

The problem with waivers. While the ability to waive particular provisions of CBAs that may restrict reform efforts offers flexibility and can support reform in the short term, relying on waivers and MOUs can be problematic, and waivers are not a long-term reform strategy.

One problem with waivers is their temporary, fragile, and tenuous nature. For example, in Columbus either party can terminate the Reform Panel (the group responsible for granting contract waivers), and all waivers are automatically cancelled.[22] In Oakland, all waivers are granted for one year only. And in Cleveland, existing waivers and MOUs not specifically authorized in the new CBA are null and void when the new contract takes effect.

Attempting to address the needs of redesigned high schools on a case-by-case basis, by relying on waivers and exemptions to existing policy, creates what some critics have described as

20. Seattle CBA Sec. F(2)(b).

21. Oakland CBA Sec. 26.1.3 and 26.1.4.

22. Columbus CBA Sec. 1403.06.

"policy by exception."[23] Researcher Mary Anne Raywid contends that this type of approach is harmful to redesigned schools because: (1) waivers may be granted or withheld arbitrarily by administrators whose primary responsibility is to monitor conformity; (2) the need to request repeated exemptions puts the redesigned schools at a disadvantage because they come to be perceived within the system as a bit like spoiled children, constantly demanding special attention and consideration; and (3) policy by exception may overcome mandates and taboos but probably will not generate the positive support on which successful reform efforts depend.[24]

In addition, the temporariness and fragility of waivers can inhibit innovation for prudent reformers, who know that CBA provisions could be re-imposed at any time and thus do not want to get too far out in front of the system.

NO, BECAUSE COLLECTIVE BARGAINING AGREEMENTS CAN CONTAIN SURPRISING DEGREES OF FLEXIBILITY

Many collective bargaining agreement provisions contain more flexibility with regard to hiring and scheduling than many high school principals and CBA critics seem to think. This is the most surprising—and perhaps the most significant—finding of our analysis of the eight contracts that we studied.

Other recent studies have reached similar conclusions. In their review of provisions in 20 different CBAs, Hess and Kelly state, "The most significant finding is that the restrictiveness of these contract provisions … was much less clear-cut than the conclusions from [previous] studies would suggest."[25] And in a subsequent analysis of CBAs from the nation's 50 largest

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23. Linda Darling-Hammond et al., "Inching Toward Reform in New York City: The Coalition Campus Schools Project," in *Creating New Schools: How Small Schools are Changing American Education*, ed. Evans Clinchy (New York: Teachers College Press, 2000), pp. 163-180.

24. Mary Anne Raywid, "The Policy Environments of Small Schools and Schools-Within-Schools," *Educational Leadership* 59, no. 5 (2002): pp. 47-51.

25. Hess and Kelly, "Scapegoat, Albatross, or What?" p. 79.

school districts, Hess and Loup conclude that "the plain language of labor agreements generally appears less restrictive than the most ardent union critics … have suggested."[26]

Examples of flexible CBA provisions in the contracts we examined for our analysis fall into five categories:

1. "Best interests of the district" exceptions;
2. Special sections that address reform-related issues directly;
3. Exceptions for "special instructional skills or qualifications";
4. Specific allowances for schools to consider outside candidates for job openings; and
5. Specific allowances for individual schools to adopt different daily schedules.

"Best interests of the district." A number of CBAs we studied contained clauses that allow the "best interests" of the district and/or students to trump other factors, considerations, and/or contract provisions, such as seniority.

Many of these "best interests" clauses are similar to this one from Columbus regarding involuntary transfers: "Correct and proper operation of the school district will necessarily require that involuntary transfers be made. In making involuntary transfers, the convenience and wishes of the individual teachers will be honored to the extent that these considerations do not conflict with *the instructional requirements and best interests of the school district and the pupils*."[27] [Emphasis added throughout.]

In San Francisco, the first of three criteria for voluntary transfers is the *"program and operational needs of the District."* (However, the contract stipulates that the district cannot deny

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26. Hess and Loup, *The Leadership Limbo*, p. 29.
27. Columbus CBA Sec. 211.02.

a transfer for this reason to "a teacher who has served in a program for more than three straight years.")[28]

In Los Angeles, the contract states that "[t]he District may, for any reason not prohibited in the balance of this Article … transfer employees when such action is deemed to be *in the best interest of the educational program of the District.*"[29] In addition, elementary school teacher assignments shall be made "on the basis of District seniority. The only exception shall occur when the site administrator reasonably determines that any specific assignment is *not in the best interests of the educational program*."[30]

The Seattle [SPS] contract makes the point that "the SPS has the legal responsibility to establish the educational programs, services and staff in accordance with SPS's basis educational goals and program continuity consistent with the financial resources available. The SPS has the authority to make necessary adjustments in the SPS's educational programs, services and staff to be consistent with financial resources available and the provisions of this Agreement."[31] The contract goes on to state that "the SPS and SEA may agree that it is in the *best interest of the employee, the site, students and the SPS* to transfer an employee from his/her assignment or building."[32]

And, finally, in Cleveland, "Special transfers are transfers requested by either teachers or administrators for the purpose of *promoting the best interest of the District*."[33]

Special sections that address reform-related issues directly. Nearly all of the contracts that we looked at contained special sections dedicated to reform-related subjects, addressing issues such as small learning communities, site-based management, new schools, restructuring, and closing the achievement gap. A number of these special sections contained

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28. San Francisco CBA Art. 15, Sec. 15.3.7.1 et seq.
29. Los Angeles CBA Art. XI, Sec. 2.0.
30. Ibid., Art. IX-A, Sec. 2.0(c)(1)(ii).
31. Seattle CBA Art. VIII, Sec. F(1).
32. Ibid., Art. VIII, Sec. F(1)(c).
33. Cleveland CBA Art. 18, Sec. 3.

provisions granting some degree of school-level personnel autonomy and scheduling flexibility.

Special reform-related sections in the contracts that we examined include: Site-Centered Decision Making (Tacoma); Professional Learning Communities and Instructional Leadership Teams (Cincinnati); Reform Panel (Columbus); Small Learning Communities, and Charter Schools (Los Angeles); New Schools (Oakland); Partnership for Closing the Achievement Gap (Seattle); and Restructuring, and Living Contract Committee (San Francisco).

Perhaps the most detailed and comprehensive example of the use of a special reform-related contract section is the Seattle CBA, which contains a 17-page section detailing the district's and the union's "Partnership for Closing the Achievement Gap."[34] This section of the contract addresses a wide range of issues, from incentive pay, to use of time for professional development, to teacher evaluation. A few highlights include:

- Commitment to removing barriers: "SPS and SEA commit to clearing the path and addressing challenges to improvement and innovation, developed by the staff on site."
- Incentive pay: "Staff in designated schools shall be eligible for incentive pay.... Funding for hiring incentives to attract qualified candidates for hard-to-fill positions ... will be sought from outside sources."
- School-level scheduling autonomy: "The scheduling and assignment of teachers, the assignment of students to classes, and the daily schedule of classes and activities shall be made with staff participation ... while recognizing that the principal has the right to make the final decision."
- Use of time for professional development: "SEA-represented staff assigned to buildings/programs will decide by consensus, or at minimum by a 2/3 vote, how to schedule and use [professional development days]."

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34. Seattle CBA Art. II.

In another example, the San Francisco contract details a two-year interim plan as part of the district's Comprehensive School Improvement Plan, which permits voluntary transfers for teachers who do not sign on to the agreement, and authorizes involuntary transfers for staff deemed not to be implementing or to be undermining the site plan.[35]

And finally, in Cleveland, the contract specifically addresses the reform-related practice of "looping": "Looping is taking the same class of children two or more years consecutively. Teachers may volunteer to loop, subject to written mutual agreement between the Principal and the UCC [site-based council]."[36]

Special instructional skills or qualifications. A number of CBA provisions allow for exceptions to a seniority-based hiring or transfer system in special instances when a less-senior candidate possesses special instructional skills or qualifications. For example, the Los Angeles contract states, "When there is an over-teachered condition, the teacher with the least District seniority … will be displaced unless it is reasonably determined at the discretion of the immediate administrator that such teacher *possesses special instructional skills or qualifications* needed by the pupils and the educational program at the school and not possessed by another teacher available to fill the need."[37]

The Columbus CBA states that vacancy "postings shall describe the vacant position, including special factors. Examples of special factors are: *special knowledge, skills or training*, and extra duties."[38]

And in Oakland, if schools need to be consolidated, the contract allows secondary schools to consider "major/minor fields and *highly specialized skills*."[39]

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35. See San Francisco CBA Appendix G (Outline of Tentative Agreement to Reduce the Need for Restructuring).
36. Cleveland CBA Art 10, Sec 21.
37. Los Angeles CBA Art XI, Sec 6.0(c).
38. Columbus CBA Sec 211.01(A).
39. Oakland CBA Sec. 12.8.

Allow consideration of external job candidates. While collective bargaining agreements typically provide preferences for internal (i.e., within-district) candidates for transfers and other job openings, two contracts in our sample contained provisions allowing external, out-of-district candidates to be considered on an equal basis.

The Seattle contract details a "Qualifications-Based Hiring" process. In Phase I of this process, "Any certificated teacher or staff from within or outside Seattle Public Schools (including new recruits) is eligible to be considered on the basis of his/her qualifications for any opening for which the teacher is certified." (Note that Phase II of this process requires that sites consider the remaining unassigned staff from the district's displaced pool for openings.)

In Oakland, meanwhile, the contract states that as part of the transfer process the principal requests from the district human resources office "a list of eligible candidates who have submitted timely transfer requests, *as well as any qualified applicants recruited by the Employer.*"[40]

Allowances for different daily schedules. A number of the contracts that we examined contained language that contemplates alternative schedules, without explicitly describing what those schedules would look like.

For example, in detailing the length of the school day for students and teachers, the Columbus CBA has a number clauses that suggest alternative schedules: "The length of the student school day for all middle and high schools *shall normally be* 7 hours per day … [School] *shall normally be in session* from 8:30 a.m. until 3:30 p.m. … *Except as provided elsewhere* in this Agreement, the regular work day for all full-time teachers is to be 7 ½ hours … In no event shall a teacher's work day begin before 7 a.m. or end after 6 p.m. *except as specifically provided elsewhere in the Agreement, unless the teacher so elects* from time to time, or *unless the teacher [chooses a job* with posted hours before 7 a.m. or after 6 p.m.] … In schools that *vary the schedules from the normal teacher work day* …"[41]

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40. Ibid., Sec 12.2.2.1.

41. Columbus CBA Sec. 204.03, 204.04, and 204.05.

In San Francisco, the contract notes, "The UBC [i.e., site-based council], following consultation with faculty, may designate additional time before or after school time within the workweek described above."[42] The San Francisco contract also specifically refers to common planning time, something many principals say is often limited by CBA time-use provisions. The contract states that schools can build common planning time into their schedules by reducing the minimum report time above to 5 to 10 minutes, and notes that "time for common planning time … shall be considered part of the work week."[43] The contract also specifically authorizes the principal to set his or her school's own schedule: "The specific schedule for the work day shall be set by the site administrator."[44]

In Tacoma, "Employees at a school site may voluntarily work an alternate schedule … in response to program needs and services."[45] The Tacoma contract also states that district-wide schedule changes are subject to collective bargaining: "Before the District makes any changes to the format … in a secondary school, the District will notify the Association; the Association shall have 10 days to initiate negotiations." However, the contract allows for school-level flexibility: individual schools may initiate changes in format subject to approval of the District and the school-level site-based decisionmaking process (or written approval of 75 percent of the school's teachers).[46]

The Los Angeles contract contains a model provision: "It is not the desire of UTLA or the District to discourage reasonable experimentation with school schedules." The provision requires that "approval of a majority of the faculty shall be obtained."[47]

The Cincinnati contract allows that "the daily schedule shall be determined by the ILT [school-based decision-making team]."[48] The contract also notes that "High schools may

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42. San Francisco CBA Sec. 7.2.1.2.
43. Ibid., Sec. 7.2.7.
44. Ibid., Sec. 7.2.5.1.1.
45. Tacoma CBA Sec. 46.
46. Ibid., Sec. 57.
47. Los Angeles CBA Art. IX, Sec. 9.0.
48. Cincinnati CBA Sec. 220(7)(h).

adopt schedules different from [the district's standard three options], provided the schedule is recommended by the [school-based decision-making team] and approved by a two-thirds vote of the entire faculty."[49]

The Cleveland contract specifically contemplates common planning time "in lieu of a class assignment," but only for those teachers part of a "contractually recognized team" or "other negotiated collaboration."[50]

And, as noted above, the Seattle contract contains specific scheduling flexibility in its special section on closing the achievement gap: "SEA-represented staff assigned to buildings/programs will decide by consensus, or at a minimum a 2/3 vote, how to schedule and use: [lists a variety of PD time, calendar waiver days, early release days, etc.]."[51] The contract goes on to state: "These standard working day schedules would not necessarily hold for schools where staff and administrators have developed and arranged special variations in curriculum, instructional methods and staff organization."[52]

MAYBE, BECAUSE MANY COLLECTIVE BARGAINING AGREEMENT PROVISIONS ARE AMBIGUOUS

Many of the collective bargaining agreements that we analyzed contained provisions that were ambiguous—i.e., these provisions were not clearly restrictive, but neither did they explicitly authorize school-level autonomy or flexibility. Ambiguity can be good for aggressive principals looking for greater flexibility and willing to push the envelope, but bad for cautious or timid principals looking to the CBA for guidance, permission, or authority before acting.

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49. Ibid., Sec. 220(7)(f)(4).
50. Cleveland CBA Art 10, Sec 5.
51. Seattle CBA Art II, Sec. B.
52. Ibid., Art IX, Sec A.

For example, many contracts state that seniority shall be given preference in personnel decisions (e.g., in determining transfer requests) "if training, experience, and individual qualifications are substantially equal." But the contracts rarely, if ever, define or describe exactly how one determines what constitutes "substantially equal."

For instance, the Oakland contract states that assignment factors include (1) "Possession of the appropriate California teaching credential;" and (2) "Qualifications and experience." The provision then goes on to state: "If the above factors are equal for candidates, seniority in the District shall be given preference in granting an assignment."[53]

The Cincinnati contract describes the determining factors in granting transfer requests: "If … training, experience, and individual qualifications are substantially equal … seniority shall control the choice."[54] The Cincinnati contract also stipulates that surplussed teachers can "bump" more junior teachers only if "training, experience, and individual qualifications are substantially equal."[55]

In San Francisco, the contract addresses the issue of involuntary transfers by stating, "Selection of tenure track teachers to be consolidated shall be based on District seniority, credentials, and qualifications…."[56] The San Francisco contract contains a similar provision regarding reassignment, stating that if there are no volunteers, then "the administration shall make the necessary reassignment based on District seniority, credentials, qualifications, and special skills."[57]

In the above examples, the contracts do not define exactly how the assessment of "other qualifications" and "special skills" is made, or by whom. It is not clear what "substantially equal" actually means. The contracts provide no guidance about how to assess or weigh

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53. Oakland CBA Art 12.4.1 and 12.4.2.
54. Cincinnati CBA Sec. 250(1)(f).
55. Ibid., Sec 250(3)(a)(2).
56. San Francisco CBA Sec. 15.5.2.
57. Ibid., Sec. 15.6.

these factors. This degree of ambiguity may make it difficult for principals to weigh these other intangible, somewhat subjective factors, because they are not given clear guidance by the contract. Instead, principals may tend to rely on seniority, a more tangible and quantifiable factor, rather than trying to determine and weigh "special skills" and other such qualifications, potentially a much more subjective and murky process. In that case it is the principal, rather than the contract, that makes seniority the dominant or controlling factor in personnel decisions.

Three other examples of ambiguous language from the contracts that we studied:

- In Oakland, the "Employer will *give full consideration* to current teachers before new applicants are considered."[58] (What does "full consideration" entail?);

- In Cleveland, teachers who have been transferred by the district can select in order of seniority from available positions in the district, and the human resources department will "*make every effort* to accommodate his/her requests …"[59] (Who determines whether HR has made "every effort"?); and

- The San Francisco contract requires that a consolidated teacher be "*given prior consideration* for the next open position…."[60] (How much consideration is enough?)

Other studies of collective bargaining agreements have also highlighted ambiguous provisions:

- "Yet the most surprising finding of this analysis is that labor agreements in a majority of large districts are neither blessedly flexible nor crazily restrictive; they are simply ambiguous, silent on many key areas of management flexibility, neither tying leaders' hands outright nor explicitly conferring authority on them to act."[61]

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58. Oakland CBA Sec. 12.4.3.
59. Cleveland CBA Art. 18, Sec. 1(B)(5).
60. San Francisco CBA Sec. 15.5.8.
61. Hess and Loup, *The Leaderships Limbo*, p. 6.

- "The problem is not so much that CBAs *prohibit* leaders from acting as that the agreements are murky; send mixed signals regarding the bounds of permissible action; or come into tension with prohibitions emanating from federal, state, judicial, or district practices and policies."[62]

- "In the end, given that union contracts are faulted for many of the rigidities of school governance, the substantial ambiguity in contract language governing issues like the school day, class size, and teacher transfers may be surprising. This finding echoes the results of Ballou's earlier study of CBAs in Massachusetts."[63]

- "… on their face, some contract provisions are not as prescriptive as some accounts would suggest. Instead, consistent with previous research, potentially restrictive contract language is often ambiguously couched or paired with potentially contradictory language."[64]

62. Ibid., p. 29.
63. Hess and Kelly, "Scapegoat, Albatross, or What?" p. 85.
64. Ibid., p. 86.

OTHER POTENTIAL BARRIERS

A handful of other potential barriers to reform are a bit broader, and exist outside the "four corners" of the CBAs. These barriers are worth noting, however, because even if reform advocates succeed in addressing the potentially restrictive CBA provisions outlined above, they may still face a series of other possible obstacles to reform.

First, many principals we talked with pointed to an attitude or culture of resistance to reform among officials at the district's central office, union officials, teachers, and other education stakeholders. Sometimes this resistance involves a local administrator or union official withholding approval for a proposed change on the grounds that the CBA does not sanction such a change. Upon further investigation, it often turns out that the CBA does not in fact prohibit what the reform advocates want to do. As one interviewee put it, a lot of these contractual issues are "smoke screens for those people who don't want to do something."[65] This report seeks in part to encourage reform advocates, educators, union leaders, and district officials to clarify what the contract allows and prohibits, and in so doing, call the bluff of those who rely on the CBA as a way to inhibit reform.[66]

A related, but broader point, is that in many cases politics may trump policy. As one former urban superintendent put it, "In the end, the answer to the question of deal or no deal with the union will be a function more of a political calculus than the legal [i.e., collective bargaining] provisions at issue."

In the context of unions and collective bargaining agreements, this resistance to reform could also result in difficulty in getting approval for waivers (since waivers typically require agreement on the part of teachers, union leaders, and district officials), and may also make it tough for reform advocates to negotiate more flexible contract provisions—like the ones highlighted in this report—into future CBAs. As we noted earlier, a recalcitrant union

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65. Price, *Legal and Policy Barriers*, p. 14.

66. Ibid.

leader, superintendent, or school board can "drop anchor" and slow reform efforts by withholding approval for needed waivers or MOUs, and/or by not agreeing to more flexible provisions at the bargaining table.

Secondly, CBAs are typically not designed to facilitate large-scale reform efforts. Rather, for the most part, these agreements are designed to deal with routine issues like transfers, vacancies, and scheduling. While this report has highlighted special sections of CBAs that address reform-related issues, the fact remains that these provisions are the exception rather than the rule, and that the majority of these agreements (literally hundreds of pages in most cases) address routine instead of reform. Furthermore, CBAs are typically negotiated with a conventional view of high schools in mind, and often assume traditional job descriptions and duties for teachers and principals. One problem that high school reformers run into—and this problem is not unique to CBAs—is that these reform advocates are trying to fit new, innovative schools and models into a legal and regulatory box developed in the 1950s. Current policy is made—and CBAs are negotiated—with an assumption that the structure of traditional schools as they exist is a "given." The notion of the traditional high school is strongly ingrained in the minds of many educators and policymakers. Tradition and practice influence the attitudes of educators, union officials, and policymakers about how to structure and support high schools. Inherited notions of what a high school should look like, how it should operate, and how it should serve its students frequently stand in the way of the vision of a new kind of redesigned high school advanced by reform advocates. In short, those interested in redesigning high schools often have to struggle against public and professional opinions that are based on the traditional high school model.[67]

Finally, as one interviewee put it, many educators are too compliant, and not subversive enough, so they do not take advantage of the potential flexibility that exists in current CBAs (as noted above). Hess and Kelly highlight a similar conclusion from

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67. See Warner-King and Price, *Legal Barriers*, and Price, *Legal and Policy Barriers*.

a previous study: "Based on his study of Massachusetts teacher contracts, Ballou concludes that contract clauses are less restrictive than district officials often claim. He reports, 'On virtually every issue of personnel policy there are contracts that grant administrators managerial prerogatives they are commonly thought to lack.... Yet, ... administrators do not take advantage of [this flexibility].'"[68]

68. Hess and Kelly, "Scapegoat, Albatross, or What?" p. 82 (citing Dale Ballou, *Teacher Contracts in Massachusetts* (Boston: Pioneer Institute, 2000), p. ix).

CONCLUSION

The basic question that we asked in this study is: Are teachers unions and collective bargaining agreements barriers to high school reform and redesign efforts in Washington, California, and Ohio? Based on our analysis of the contracts that we studied, our answer is: sometimes, but not as often as many educators and union critics seem to think.

On one hand, as detailed in this report, many educators perceive the complex and unwieldy contracts as barriers to reform, and often this perception becomes reality. And while perceptions can limit school-level flexibility and autonomy, the CBAs that we studied contain actual provisions that do so as well. On the other hand, flexibility is available in the form of waiver provisions and side agreements. And, in perhaps our most significant finding, many contract provisions in our sample proved to be more flexible than educators, reform advocates, and critics often suggest. Finally, often the contract language is simply ambiguous; such ambiguity offers the potential for greater latitude for aggressive or entrepreneurial principals, while serving to limit more cautious leaders.

As noted at the outset of this report, there is a difference between the contract as written and the contract as practiced. Contracts can be used flexibly or inflexibly, depending on the inclinations of both parties. But without the consent and cooperation of both the union and management, any flexibility in the contract as written (and as highlighted in this report) will go unused. Because of this, collective bargaining agreements are often more flexible as written than as practiced.

Contract provisions themselves are not the only potential barriers to reform. As one legal analyst told us, "I think it's fair to put CBAs in the category of 'things that cause inertia in public education,' a category that I think also includes existing district policies, people's habits, a limit to the number of hours in the day, and parent perceptions of what school 'should' look like. Do these things prevent reform? Probably not in an absolute sense—but they make people tired and inclined to stick with what they know."

Recommendations for addressing collective bargaining issues in the context of high school reform efforts fall into two categories: near-term actions, and longer-term actions. In the near term, reform advocates can take advantage of the leeway that exists within CBAs by looking to waivers, MOUs, and other specific contractual language offering flexibility, as well as exploiting the ambiguity surrounding certain provisions. One key to success in the short run is whether union and management can collaborate to ensure that the contract as practiced is as flexible as the contract as written.

In the long run, however, given that CBAs are typically designed to address routine rather than reform, and given that reliance on waivers can be problematic, tinkering with contract provisions in existing, traditional CBAs may not be the most efficient and effective path for reform advocates seeking greater school-level flexibility and autonomy. A more lasting strategy, then, should involve the following:

- Revising CBAs to include some of the more flexible contract provisions highlighted throughout this report;
- Exploring the possibility of negotiating new, innovative "thin" contracts that have started to take hold in a few districts, and in unionized charter schools (e.g., Green Dot Public Schools);
- Offering training for principals, superintendents, general counsels, and other district and union officials to help them take advantage of flexibility in the existing CBA, and to negotiate flexible provisions into future contracts;
- Addressing the fragile and tenuous nature of waivers and MOUs by making those provisions and agreements a more standard, common, and accepted part of the collective bargaining process; and
- Working to improve union/management relationships to address resistance to reform on the part of local stakeholders.

While this report has highlighted examples of flexible provisions from a variety of different contracts, none of the individual contracts we studied were ideally flexible. Rather,

the provisions we feature in this report should be seen as models that those seeking greater school-level autonomy and flexibility can attempt to negotiate into future CBAs. In the meantime, reform advocates should scour their existing contracts for previously untapped flexibility, and should not be afraid to push the envelope in seeking to take advantage of such potentially flexible contract provisions.

APPENDIX: COLLECTIVE BARGAINING AGREEMENTS EXAMINED FOR THIS STUDY

Cincinnati
Contract made and entered into by and between the Cincinnati Board of Education and the Cincinnati Federation of Teachers Local 1520 AFT, OFT, AFL-CIO (January 1, 2007 through December 31, 2009)

Cleveland
Agreement between The Board of Education of the Cleveland Metropolitan School District and Cleveland Teachers Union Local No. 279 American Federation of Teachers, AFL-CIO (Effective July 1, 2007 through June 30, 2010)

Columbus
Agreement between the Columbus Board of Education and the Columbus Education Association (To be effective until August 27, 2008)

Los Angeles
2006–2009 Agreement between Los Angeles Unified School District and United Teachers Los Angeles

Oakland
Agreement between Oakland Unified School District and Oakland Education Association Representing Teachers and Other Certificated Classifications (For the Period July 1, 2005 through June 30, 2008)

San Francisco
Contract between San Francisco Unified School District and United Educators of San Francisco Covering Certificated Personnel (July 1, 2004–June 30, 2007)

Seattle
Collective Bargaining Agreement between Seattle Public Schools and Seattle Education Association; Certificated Non-Supervisory Employees (2004–2009)

Tacoma
Board of Directors of Tacoma School District No. 10 and the Tacoma Education Association (September 1, 2005–August 31, 2008)

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(Note: See Appendix for a list of the collective bargaining agreements examined for this study.)

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